

ALAN S. YEE (SBN 091444)  
SIEGEL & YEE  
499 14th Street, Suite 220  
Oakland, CA 94612  
Telephone: (510) 839-1200  
Facsimile: (510) 444-6698

Attorneys for Plaintiff  
JONI BAKER, aka F. JOAN BAKER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JONI BAKER, aka F. JOAN BAKER,  
  
Plaintiffs,  
  
vs.  
  
TARGET CORPORATION, *et al.*,  
  
Defendants.

NO. C 07-04998 BZ

PLAINTIFF'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
MOTION TO REMAND ACTION

Hearing Date: December 5, 2007  
Time: 10:00 a.m.  
Courtroom: G  
Magistrate Judge: Hon. Bernard Zimmerman

I. INTRODUCTION

This case was removed to this court by notice on September 27, 2007. Plaintiff now moves to remand this action to the Superior Court of the State of California based on the failure of defendants to comply with 28 U.S.C. §1446(b).

II. ISSUE PRESENTED

Whether defendant's notice of removal was timely filed under 28 U.S.C. §1446(b).

III. FACTUAL BACKGROUND

This case was originally commenced in the Superior Court of the State of California for the County of Alameda. A copies of the Summons and Complaint were personally served on defendant on June 12, 2007. Defendant answered the complaint on

1 July 12, 2007 and propounded written discovery. On August 23, 2007, plaintiff provided  
 2 defendant with responses to interrogatories, including discovery responses regarding  
 3 damages claimed by plaintiff. Defendants, however, did not file a notice of removal until  
 4 September 27, 2007, 35 days later.

#### 5 IV. LEGAL ARGUMENT

6 The right to remove exist only briefly and will be lost unless it is exercised  
 7 in an expeditious fashion. The removal statute provides two thirty-day windows during  
 8 which a case may be removed: 1.) during their first thirty days after the defendant  
 9 receives the initial pleading, or 2.) during the first thirty days after the defendant receives  
 10 a paper “from which it may first be ascertained that the case is one which is or has become  
 11 removable” if “the case stated by the initial pleading is not removable.” 28 U.S.C. §  
 12 1446(b). When grounds for removal do not appear on the face of the initial pleading,  
 13 courts may look to “documents exchanged in the case by the parties to determine when  
 14 the defendant had notice of the grounds for removal. Thus, when the grounds for  
 15 removal under diversity of citizenship is disclosed in plaintiff’s answers to interrogatories,  
 16 the defendant has 30 days from the notice of removability in the answer to interrogatories.  
 17 *Lovern v. General Motors Corp.* (4<sup>th</sup> Cir. 1997) 121 F.3d 160, 161. See also *Harris v.*  
 18 *Bankers Life and Casualty Company* (9<sup>th</sup> Cir. 2005) 425 F.3d 689. The defendant, as the  
 19 removing party, bears the burden of establishing the right to removal.

20 On August 23, 2007, defendant was served with responses to interrogatories. From  
 21 those interrogatory responses, defendant can ascertain that plaintiff was a citizen of  
 22 California. (Decl. of A.Yee, Exhibit A, interrogatory no. 2.5, page 2, and Exhibit B,  
 23 response no. 2.5, page 2) Additionally, from those interrogatory responses defendant can  
 24 ascertain that plaintiff as a result of the accident in question, plaintiff had aggravated a  
 25 preexisting C-5-C6 herniated disc in her neck and had undergone surgery to her neck.  
 26 (Decl. of A. Yee, Exhibit A, interrogatory no. 6.2, page 3 and Exhibit B, response no. 6.2,  
 27 page 2) Defendant can also ascertain that plaintiff continued to have neck pain and that  
 28 plaintiff’s physician has recommended a second operation on her neck. (Decl. of A.Yee,

